



## DEPARTMENT OF JUSTICE

### 28 CFR Part 85

[Docket No. OLP 175]

#### Civil Monetary Penalties Inflation Adjustments for 2023

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after January 30, 2023, with respect to violations occurring after November 2, 2015.

**DATES:** This rule is effective January 30, 2023.

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue, NW, Washington, DC 20530, telephone (202) 514-8059 (not a toll- free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015) (“BBA”), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101-410 (the “Inflation Adjustment Act”), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the

Department of Justice published an interim rule (“June 2016 interim rule”) to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the Supplementary Information (also known as the preamble) of the Department’s June 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department’s past implementation of inflation adjustments. The June 2016 interim rule was finalized without change by the publication of a final rule on April 5, 2019 (84 FR 13525).

After the initial adjustments in 2016, the BBA also provides for agencies to adjust their civil penalties on January 15 of each year to account for inflation during the preceding year, rounded to the nearest dollar. Accordingly, on February 3, 2017 (82 FR 9131), and on January 29, 2018 (83 FR 3944), the Department published final rules pursuant to the BBA to make annual inflation adjustments in the civil monetary penalties assessed or enforced by components of the Department after those dates, with respect to violations occurring after November 2, 2015.

The Department has continued to promulgate rules adjusting the civil money penalties for inflation thereafter. Most recently, the Department published a final rule on May 5, 2022 (87 FR 27513), to adjust the civil money penalties to account for inflation occurring since 2021.

## **II. Inflation Adjustments Made by This Rule**

As required, the Department is publishing this final rule to adjust for 2023 the Department’s current civil penalties. Under the statutory formula, the adjustments made by this rule are based on the Bureau of Labor Statistics’ Consumer Price Index for October 2022. The OMB Memorandum for the Heads of Executive Departments and Agencies M-23-05 (Dec. 15, 2022) <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf> (last visited Dec. 29, 2022), instructs that the applicable inflation factor for this adjustment is 1.07745.

Accordingly, this rule adjusts the civil penalty amounts in 28 CFR 85.5 by applying this

inflation factor mechanically to each of the civil penalty amounts listed (rounded to the nearest dollar).

Example:

- In 2016, the Program Fraud Civil Remedies Act penalty was increased to \$10,781 in accordance with the adjustment requirements of the BBA.
- For 2017, where the applicable inflation factor was 1.01636, the existing penalty of \$10,781 was multiplied by 1.01636 and revised to \$10,957 (rounded to the nearest dollar).
- For 2018, where the applicable inflation factor is 1.02041, the existing penalty of \$10,957 was multiplied by 1.02041 and revised to \$11,181 (rounded to the nearest dollar).
- Had an adjustment rule been published in 2019, where the applicable inflation factor was 1.02041, the existing penalty of \$11,181 would have been multiplied by 1.02522 and revised to \$11,463 (rounded to the nearest dollar).
- For the final rule in 2020 (*in which the ending 2019 penalty amount calculations were used as the starting penalty amounts for purposes of calculation*), the starting penalty of \$11,463 was multiplied by 1.01764 and revised to \$11,665 (rounded to the nearest dollar).
- For the final rule in 2021, where the applicable inflation factor was 1.01182, the existing penalty of \$11,665 was multiplied by 1.01182 and revised to \$11,803 (rounded to the nearest dollar).
- For the final rule in 2022, where the applicable inflation factor was 1.06222, the existing penalty of \$11,803 was multiplied by 1.06222 and revised to \$12,537 (rounded to the nearest dollar).
- For this final rule in 2023, where the applicable inflation factor is 1.07745 the existing penalty of \$12,537 is multiplied by 1.07745 and revised to \$13,508 (rounded to the nearest dollar).

This rule adjusts for inflation civil monetary penalties within the jurisdiction of the Department of Justice for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

### **III. Effective Date of Adjusted Civil Penalty Amounts**

Under this rule, the adjusted civil penalty amounts for 2023 are applicable only to civil penalties assessed after January 30, 2023, with respect to violations occurring after November 2,

2015, the date of enactment of the BBA.

The penalty amounts set forth in the existing provisions of 28 CFR 85.5, and its accompanying table, are applicable to all covered civil penalties assessed after August 1, 2016, and on or before January 30, 2023, with respect to violations occurring after November 2, 2015.

The revised table in this rule lists the civil penalty amounts as adjusted in 2023, 2022, 2021, and 2020. For penalties assessed prior to the adjustment rule adopted in 2020, section 85.5(c) of this rule directs readers back to the 2018 version of the rule, as published in the Federal Register, which sets forth the adjusted civil penalty amounts for penalties assessed prior to the 2020 adjustments. 83 FR 3944 (Jan. 29, 2018).

Civil penalties for violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, will continue to be subject to the civil monetary penalty amounts set forth in the Department's regulations in 28 CFR parts 20, 22, 36, 68, 71, 76, and 85 as such regulations were in effect prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016). See 83 FR 3944.

#### **IV. Statutory and Regulatory Analyses**

##### ***A. Administrative Procedure Act***

The BBA provides that, for each annual adjustment made after the initial adjustments of civil penalties in 2016, the head of an agency shall adjust the civil monetary penalties each year notwithstanding 5 U.S.C. 553. Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a delayed effective date.

##### ***B. Regulatory Flexibility Act***

Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. See 5 U.S.C. 603(a).

##### ***C. Executive Orders 12866 and 13563 – Regulatory Review***

This final rule has been drafted in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the BBA by making an across-the-board adjustment of the civil penalty amounts in 28 CFR 85.5 to account for inflation since the adoption of the Department’s final rule published on May 9, 2022 (87 FR 27513).

#### ***D. Executive Order 13132 – Federalism***

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### ***E. Executive Order 12988 – Civil Justice Reform***

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### ***F. Unfunded Mandates Reform Act of 1995***

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (as adjusted for

inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### ***G. Congressional Review Act***

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

### **List of Subjects in 28 CFR Part 85**

Administrative practice and procedure, Penalties.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Assistant Attorney General, Office of Legal Policy, by A.G. Order No. 5328-2022, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

### **PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT**

1. The authority citation for part 85 continues to read as follows:

**Authority:** 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321; Pub. L. 114-74, section 701, 28 U.S.C. 2461 note.

2. Section 85.5 is revised to read as follows:

#### **§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.**

(a) For civil penalties assessed after January 30, 2023, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the seventh column of table 1 to this section.

(b) For civil penalties assessed after May 9, 2022, and on or before January 30, 2023, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the sixth column of table 1 to this section. For civil penalties assessed after December 13, 2021, and on or

before May 9, 2022, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the fifth column of table 1 to this section. For civil penalties assessed after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fourth column of table 1 to this section.

(c) For civil penalties assessed on or before June 19, 2020, the civil monetary penalties provided by law within the jurisdiction of the Department are set forth in this section (revised as of July 1, 2018).

(d) All figures set forth in table 1 to this section are maximum penalties, unless otherwise indicated.

**Table 1 to § 85.5**

U.S.C. citation	Name/ description	CFR citation	DOJ penalty assessed after 6/19/2020 (\$)	DOJ penalty assessed after 12/13/2021 (\$)	DOJ penalty assessed after 5/9/2022 FN1 (\$)	DOJ penalty assessed after 1/30/2023 FN2 (\$)
<b>ATF</b>						
18 U.S.C. 922(t)(5)	Brady Law — Nat'l Instant Criminal Check System (NICS); Transfer of firearm without checking NICS		8,831	8,935	9,491	10,226
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation		3,230	3,268	3,471	3,740
<b>Civil Division</b>						
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation	28 CFR 85.3(a)(6)	2,048,915	2,073,133	2,202,123	2,372,677
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day)	28 CFR 85.3(a)(7)	2,048,915	2,073,133	2,202,123	2,372,677
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	10,244,577	10,365,668	11,010,620	11,863,393
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act)	28 CFR 85.3(a)(8)	5,951	6,021	6,396	6,891
31 U.S.C. 3729(a)	False Claims Act; FN3 Violations	28 CFR 85.3(a)(9)	Min 11,665, Max 23,331	Min 11,803, Max 23,607	Min 12,537, Max 25,076	Min 13,508, Max 27,018
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim)	28 CFR 71.3(a)	11,665	11,803	12,537	13,508
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement)	28 CFR 71.3(f)	11,665	11,803	12,537	13,508
40 U.S.C. 123(a)(1)(A)	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act)	28 CFR 85.3(a)(12)	5,951	6,021	6,396	6,891



41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks FN4 (per occurrence)	28 CFR 85.3(a)(13)	23,331	23,607	25,076	27,018
18 U.S.C. 2723(b)	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records — Substantial Non-compliance (per day)		8,606	8,708	9,250	9,966
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes FN5 (per violation)	28 CFR 85.3(c)	102,446	103,657	110,107	118,635
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; FN6 Violation by an individual (per violation)		107,050	108,315	115,054	123,965
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; FN6 Violation by an organization (per violation)		1,070,487	1,083,140	1,150,533	1,239,642
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; FN7 Violation (per violation)		13,525	13,685	14,536	15,662
<b>Civil Rights Division (excluding immigration- related penalties)</b>						
18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act"); Nonviolent physical obstruction, first violation	28 CFR 85.3(b)(1)(i)	17,161	17,364	18,444	19,872
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Nonviolent physical obstruction, subsequent violation	28 CFR 85.3(b)(1)(ii)	25,820	26,125	27,750	29,899
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a nonviolent physical obstruction, first violation	28 CFR 85.3(b)(2)(i)	25,820	26,125	27,750	29,899
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Violation other than a nonviolent physical violation)	28 CFR 85.3(b)(2)(ii)	43,034	43,543	46,252	49,834
42 U.S.C. 3614(d)(1)(C)(i)	Fair Housing Act of 1968; first violation	28 CFR 85.3(b)(3)(i)	107,050	108,315	115,054	123,965
42 U.S.C. 3614(d)(1)(C)(ii)	Fair Housing Act of 1968; subsequent violation	28 CFR 85.3(b)(3)(ii)	214,097	216,628	230,107	247,929

42 U.S.C. 12188(b)(2)(C)(i)	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation	28 CFR 36.504(a)(3)(i)	96,384	97,523	103,591	111,614
42 U.S.C. 12188(b)(2)(C)(ii)	Americans With Disabilities Act; Public accommodations for individuals with disabilities subsequent violation	28 CFR 36.504(a)(3)(ii)	192,768	195,047	207,183	223,229
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; first violation	28 CFR 85.3(b)(4)(i)	64,715	65,480	69,554	74,941
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; subsequent violation	28 CFR 85.3(b)(4)(ii)	129,431	130,961	139,109	149,883
<b>Criminal Division</b>						
18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim		Min 370, Max 7,395	Min 374, Max 7,482	Min 397, Max 7,948	Min 428, Max 8,564
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation FN8		23,331	23,607	25,076	27,018
<b>DEA</b>						
21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation)	28 CFR 76.3(a)	21,410	21,663	23,011	24,793
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export	28 CFR 85.3(d)	74,388	75,267	79,950	86,142
21 U.S.C. 842(c)(1)(A)	Controlled Substances Act (“CSA”); Violations of 842(a) — other than (5), (10), (16) and (17) — Prohibited acts re: controlled substances (per violation)		67,627	68,426	72,683	78,312
21 U.S.C. 842(c)(1)(B)(i)	CSA; Violations of 842(a)(5), (10), and (17) — Prohibited acts re: controlled substances		15,691	15,876	16,864	18,170
21 U.S.C. 842(c)(1)(B)(ii)	SUPPORT for Patients and Communities Act; Violations of 842(b)(ii) - Failures re: opioids		101,764	102,967	109,374	117,845

21 U.S.C. 842(c)(1)(C)	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor — False labeling of anabolic steroids (per violation)		541,933	548,339	582,457	627,568
21 U.S.C. 842(c)(1)(D)	CSA; Violation of 825(e) at the retail level — False labeling of anabolic steroids (per violation)		1,084	1,097	1,165	1,255
21 U.S.C. 842(c)(2)(C)	CSA; Violation of 842(a)(11) by a business — Distribution of laboratory supply with reckless disregard FN9		406,419	411,223	436,809	470,640
21 U.S.C. 842(c)(2)(D)	SUPPORT for Patients and Communities Act; Violations of 842(a)(5), (10) and (17) by a registered manufacture or distributor of opioids. Failures re: opioids		508,820	514,834	546,867	589,222
21 U.S.C. 856(d)	Illicit Drug Anti- Proliferation Act of 2003; Maintaining drug-involved premises FN10		374,763	379,193	402,786	433,982

#### Immigration- Related Penalties

8 U.S.C. 1324a(e)(4)(A)(i)	Immigration Reform and Control Act of 1986 (“IRCA”); Unlawful employment of aliens, first order (per unauthorized alien)	28 CFR 68.52(c)(1)(i)	Min 583, Max 4,667	Min 590, Max 4,722	Min 627, Max 5,016	Min 676, Max 5,404
8 U.S.C. 1324a(e)(4)(A)(ii)	IRCA; Unlawful employment of aliens, second order (per such alien)	28 CFR 68.52(c)(1)(ii)	Min 4,667, Max 11,665	Min 4,722, Max 11,803	Min 5,016, Max 12,537	Min 5,404, Max 13,508
8 U.S.C. 1324a(e)(4)(A)(iii)	IRCA; Unlawful employment of aliens, subsequent order (per such alien)	28 CFR 68.52(c)(1)(iii)	Min 6,999, Max 23,331	Min 7,082, Max 23,607	Min 7,523, Max 25,076	Min 8,106, Max 27,018
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual)	28 CFR 68.52(c)(5)	Min 234, Max 2,332	Min 237, Max 2,360	Min 252, Max 2,507	Min 272, Max 2,701
8 U.S.C. 1324a (note)	IRCA; Violation relating to participating employer’s failure to notify of final nonconfirmation of employee’s employment eligibility (per relevant individual)	28 CFR 68.52(c)(6)	Min 813, Max 1,625	Min 823, Max 1,644	Min 874, Max 1,746	Min 942, Max 1,881
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation)	28 CFR 68.52(c)(7)	2,332	2,360	2,507	2,701

8 U.S.C. 1324b(g)(2)(B)(iv)(I)	IRCA; Unfair immigration- related employment practices, first order (per individual discriminated against)	28 CFR 68.52(d)(1)(viii)	Min 481, Max 3,855	Min 487, Max 3,901	Min 517, Max 4,144	Min 557, Max 4,465
8 U.S.C. 1324b(g)(2)(B)(iv)(II)	IRCA; Unfair immigration- related employment practices, second order (per individual discriminated against)	28 CFR 68.52(d)(1)(ix)	Min 3,855, Max 9,639	Min 3,901, Max 9,753	Min 4,144, Max 10,360	Min 4,465, Max 11,162
8 U.S.C. 1324b(g)(2)(B)(iv)(III)	IRCA; Unfair immigration- related employment practices, subsequent order (per individual discriminated against)	28 CFR 68.52(d)(1)(x)	Min 5,783, Max 19,277	Min 5,851, Max 19,505	Min 6,215, Max 20,719	Min 6,696, Max 22,324
8 U.S.C. 1324b(g)(2)(B)(iv)(I V)	IRCA; Unfair immigration- related employment practices, unfair documentary practices (per individual discriminated against)	28 CFR 68.52(d)(1)(xii)	Min 193, Max 1,928	Min 195, Max 1,951	Min 207, Max 2,072	Min 223, Max 2,232
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order — for violations described in U.S.C. 1324c(a)(1)–(4) (per document)	28 CFR 68.52(e)(1)(i)	Min 481, Max 3,855	Min 487, Max 3,901	Min 517, Max 4,144	Min 557, Max 4,465
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order — for violations described in U.S.C. 1324c(a)(1)–(4) (per document)	28 CFR 68.52(e)(1)(iii)	Min 3,855, Max 9,639	Min 3,901, Max 9,753	Min 4,144, Max 10,360	Min 4,465, Max 11,162
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order — for violations described in U.S.C. 1324c(a)(5)–(6) (per document)	28 CFR 68.52(e)(1)(ii)	Min 407, Max 3,251	Min 412, Max 3,289	Min 438, Max 3,494	Min 472, Max 3,765
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order — for violations described in U.S.C. 1324c(a)(5)–(6) (per document)	28 CFR 68.52(e)(1)(iv)	Min 3,251, Max 8,128	Min 3,289, Max 8,224	Min 3,494, Max 8,736	Min 3,765, Max 9,413
<b>FBI</b>						
49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation)		1,722	1,742	1,850	1,993
<b>Office of Justice Programs</b>						
34 U.S.C. 10231(d)	Confidentiality of information; State and Local Criminal History Record Information Systems — Right to Privacy Violation	28 CFR 20.25	29,755	30,107	31,980	34,457

<sup>1</sup> The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation on May 9, 2022.

<sup>2</sup> All figures set forth in this table are maximum penalties, unless otherwise indicated.

<sup>3</sup> Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1) (2015). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. Id. section 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

<sup>4</sup> Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 44 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than \$10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

<sup>5</sup> Section 216(b) of Title 18 provides that the civil penalty should be no more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b) (2015). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

<sup>6</sup> Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b) (2015). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. Id. section 2105(b). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

<sup>7</sup> The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2015). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

<sup>8</sup> Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or \$10,000. 18 U.S.C. 1956(b)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

<sup>9</sup> Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (11) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C) (2015). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

<sup>10</sup> Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of \$250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

<sup>11</sup> The SUPPORT for Patients and Communities Act, Pub. L. 115-221 was enacted Oct. 24, 2018.

**Dated:** January 23, 2023.

---

Hampton Y. Dellinger  
Assistant Attorney General  
Office of Legal Policy

[FR Doc. 2023-01704 Filed: 1/27/2023 8:45 am; Publication Date: 1/30/2023]